

1 is an essential and unchanging part of the case-or-controversy requirement of Article III.”
2 *Local Nos. 175 & 505 Pension Trust v. Anchor Cap.*, 498 F.3d 920, 923 (9th Cir. 2007)
3 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)).

4 Defendant argues that Plaintiffs lack standing to bring this present action because
5 Plaintiffs filed a bankruptcy petition—with the property at issue in this case listed as an asset
6 of the bankruptcy estate—before the filing of this action. Thus, Defendant argues, the
7 bankruptcy trustee alone has standing to sue on behalf of the bankruptcy estate, including
8 causes of action related to the assets of the bankruptcy estate. The Court agrees.

9 When Plaintiffs filed their bankruptcy petition, they created a bankruptcy estate that
10 included the property that is the subject of this litigation. 11 U.S.C. § 541(a)(1), (7) (“The
11 commencement of a case under section 301, 302, or 303 of this title creates an estate. Such
12 estate is comprised of all the following property, wherever located and by whomever held:
13 . . . all legal or equitable interests of the debtor in property as of the commencement of the
14 case. . . . [and] [a]ny interest in property that the estate acquires after the commencement of
15 the case.”). Section 541 is broad in scope and includes causes of action. *United States v.*
16 *Whiting Pools, Inc.*, 462 U.S. 198, 205 (1983). The bankruptcy trustee—and not Plaintiffs as
17 debtors—alone has the capacity to sue on behalf of the bankruptcy estate. *In Re Estate of*
18 *Spirtos*, 443 F.3d 1172, 1176 (9th Cir. 2006) (“[T]he bankruptcy code endows the bankruptcy
19 trustee with the exclusive right to sue on behalf of the estate.”). *See also* 11 U.S.C. § 323(b)
20 (“The trustee in a case under this title has capacity to sue and be sued.”); *In re Eisen*, 31 F.3d
21 1447, 1451 n. 2 (9th Cir. 1994) (“Once appointed a trustee, the debtor's assets and claims
22 pass to the trustee, making the trustee ‘the proper party in interest, and the only party with
23 standing to appeal the bankruptcy court's order.’” (quoting *Hancock Bank v. Jefferson*, 73
24 B.R. 183, 185 (Bankr. S.D. Miss. 1986)); *Sierra Switchboard Co. v. Westinghouse Elec.*
25 *Corp.*, 789 F.2d 705, 707-09 (9th Cir. 1986) (holding that debtor’s claim of emotional
26 distress properly belonged to the estate). Because Plaintiffs brought this action after the
27 filing of their bankruptcy petition, and because the subject of this litigation involves property
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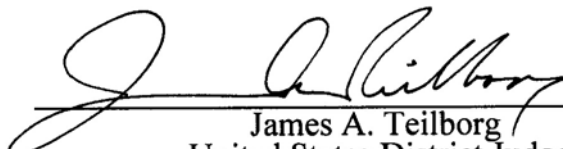
1 that is a part of Plaintiffs' bankruptcy estate, Plaintiffs as debtors lack the standing necessary
2 to bring this cause of action.

3 Accordingly,

4 **IT IS ORDERED** that Defendant America's Servicing Company's Motion to
5 Dismiss (Doc. # 7) is GRANTED insofar as that motion is premised upon lack of subject
6 matter jurisdiction, but DENIED without prejudice in all other respects.

7 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment
8 accordingly.

9 DATED this 28th day of July, 2009.

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13 James A. Teilborg
14 United States District Judge
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